

February 4, 2009

To: Members of the Federal Advisory Committee on International Postal and Delivery Services

From: William Gensburg, Express Delivery and Logistics Association

I am the Postal Committee Chair of the Express Delivery and Logistics Association, also known as XLA.

XLA represents over 60 companies employing over 150,000 people in the international express delivery and mail industries.

XLA has always been greatly concerned with the dichotomy that exists between the concept of regulatory equality for our industry vis-à-vis the United States Postal Service and the hard facts on the ground which have always entailed specific regulatory advantages for the USPS in the areas of customs, security and international UPU related postal regulatory architecture. These differences have existed since both international express delivery and bulk international mail were deregulated in the 1970s and 1980s respectively.

Today, in the some of the most tumultuous times in our economic history, these differences are making what has been an always very difficult regulatory environment that much more severe, even dire, for a very important industry that is attached in so many ways to the greater American economy.

At the end of 2006, the Postal Accountability and Enhancement Act was signed into law. It unmistakably addressed these issues with the following language:

Sec 407

(a) It is the policy of the United States –
(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services and shall have the power to conclude postal treaties, conventions, and amendments related to international postal services and other international delivery services, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(e)(2) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

In direct opposition to this law, the following are just examples of the uneven regulatory constructs that continue to exist:

1. Different clearance procedures for incoming shipments of mail and express deliveries for the USPS versus all other entrants in the marketplace.
2. Different export air transport security regimes for outgoing shipments of mail and express deliveries for the USPS versus all other entrants in the marketplace.
3. The exclusive right for the USPS, supported by State, to use UPU documentation for outgoing mail and express shipments.
4. The unique existence of the United States Postal Inspection Service as the only police force in the international mail and delivery marketplace under control of only one entrant in the marketplace; its mission statement of, among other things, “protecting postal revenues generated by international business development” and its related anticompetitive applications of the same, and its official representation in government agencies (i.e. State) that are, at the same time, given the responsibility to evenly regulate the international mail and express delivery marketplace.

Substantive evidence exists from our membership, some of it through my own experience as CEO of a company in the international mail and delivery marketplace, which shows how each of the above problems has tilted what is supposed to be an evenly regulated competitive arena towards the USPS.

The USPS has argued in filings with the Postal Regulatory Commission that these problems are actually disadvantages rather than advantages. In my own dealings with State since the PAEA was enacted I have received similar responses at times. Having said this, the PAEA does not suggest that regulatory distinctions for one entrant in the marketplace over another should be debated as advantageous or not, it merely says they cannot exist and that each agency that embodies these distinctions must eliminate them.

It has been over two years since the PAEA’s inception yet there has been virtually no movement at all to tackle the issues above, not including many others that are similar in that they allow for a separate regime for the USPS versus all other market entrants.

As previously intimated, we are now in what is understood to be the most severe economic crisis in decades. Government is attempting to stimulate the private economy in as many ways as possible from near zero interest rates to various ways to inject a trillion dollars or more into the economy. Meanwhile, as our industry is undergoing at

least as much upheaval as the rest of the economy, the inaction of government agencies to evenly regulate a quasi-governmental competitor engaged in private business is exacerbating our difficulties. XLA fears that without these agencies immediately recognizing and dealing with these problems on their own, or without Legislative guidance in doing the same, revenues will dry up and jobs will be lost at a much greater rate than they would otherwise because of the shrinking market in international mail and express delivery that exists today.

While these problems involve complex issues as well as decades and even centuries of regulatory architecture, continuing to ignore the law will have drastic consequences in the near future. XLA asks that the Federal Advisory Committee consider these issues with the immediacy and gravity that they require.